

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

HAYWARD INDUSTRIES, INC.,

Plaintiff/Counterclaim Defendant,

v.

Civil Action No. 3:20-cv-00710-MOC-DSC

BLUEWORKS CORPORATION,
BLUEWORKS INNOVATION
CORPORATION, NINGBO C.F.
ELECTRONIC TECH CO., LTD.;
NINGBO YISHANG IMPORT AND
EXPORT CO., LTD.,

Defendants/Counterclaim Plaintiffs.

**DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION TO CONTINUE THE
TRIAL DATE AND FOR PARTIAL RECONSIDERATION OF THE COURT'S
JUNE 28, 2023 ORDER**

Defendants respectfully submit this response to Plaintiff's motion to continue the August 21, 2023 trial-ready date out of deference to the Court's schedule. Defendants are prepared to proceed to trial according to the current schedule, or as convenient for the Court.¹

Plaintiff asks the Court to defer trial for two or three months, from August to "October or November," citing various scheduling conflicts. (Doc. No. 225.) While Defendants do not oppose a reasonable extension to accommodate legitimate conflicts, Plaintiff offers no good cause to extend the trial by up to three months.

¹ Defendants informed Plaintiff's counsel of this position in discussing this continuance, explaining that, "[f]ollowing the court's most recent order, we think it best to leave the trial date and any delay to the court's discretion."

Defendants first note that Plaintiff's scheduling conflicts seem to be of their own making. The present August 21 trial-ready date was set on March 8, 2023. (*See* 3/8/2023 Text-Only Order.) However, according to Plaintiff, only "[f]ollowing the issuance of the June 28th order, Hayward promptly contacted its three experts and lay witnesses again to confirm whether they would be available for the continued trial date." (Doc. No. 225 at 8.) Apparently, since Plaintiff last reported its conflicts in May, two of its experts, Professor Didow and Dr. Horn, have now become unavailable. (Doc. No. 117 at 4.) Yet the August 21 trial-ready date has been set since March 8, 2023, and Plaintiff offers no explanation for waiting nearly four months to confirm or secure its witnesses' availability. These are not "prior commitments." They are conflicts that arose after Plaintiff and its witnesses knew the trial was set for August.²

Defendants additionally do not understand why Plaintiff's damages expert is unavailable for trial for two full weeks due to two potential depositions and trial preparation in other matters. In her declaration Ms. Saitz states only that, "Counsel in those cases have advised me that the depositions and preparation sessions are being scheduled for the last two weeks of August." (Doc. No. 225-2.) As those depositions do not sound even to have been set, this scheduled trial should take priority in Ms. Saitz's schedule.

Plaintiff's stated conflicts also do not justify extending the trial date to October or November as requested. According to their declarations, one member of Plaintiff's local

² Plaintiff also brings this motion over two weeks after this Court's June 28, 2023 Order confirming the August 21 trial-ready date, and when pre-trial preparations are already well under way. *See* LCvR 7.1(f) ("A motion seeking continuance of a hearing or trial must be filed promptly upon counsel learning of the need for same.").

counsel firm is unavailable through September 8³; Plaintiff's damages expert may have conflicts through mid-September; Plaintiff's technical expert is now unavailable through August 31; and Plaintiff's survey expert is now unavailable through August 27. Given these schedules, it appears trial could be moved by just a few weeks, to mid-September, if convenient for the Court. Plaintiff does not justify its proposal to instead defer trial by two to three months.⁴

Finally, Defendants also do not understand Plaintiff's partial motion for reconsideration of the Court's June 28, 2023 Order affirming the August 21 trial-ready date. According to Plaintiff, "the Court did not expressly address [Plaintiff's] scheduling conflicts in its June 28 order," and it brings the motion on that basis. (Doc. No. 225 at 3.) However, the Court's order followed two briefs filed by Plaintiff that raised the conflicts (Doc. Nos. 112, 117), and the order expressly refers to both (Doc. No. 210 at 1, 3). There was no "mistake arising from oversight or omission" that justifies a motion under Rule 60, and Defendants respectfully submit it should be denied.⁵

In view of the foregoing, including this Court's recent affirmance of the August 21 trial-ready date, Defendants defer to the Court's schedule as to when trial of this matter should proceed.

³ According to the docket, at least one other attorney from local counsel's firm, Womble Bond Dickinson, has also appeared in this case and presumably could appear at trial.

⁴ Defendants note that their damages expert has a conflict due to international travel from October 7-14.

⁵ Defendants also acknowledge the prior extension they were granted in March. (*See* 3/8/2023 Text-Only Order.) Defendants respectfully submit, however, that the same circumstances that warranted that extension, including the appearance of new lead counsel, do not justify Plaintiff's requested continuance now. Defendants also note that that extension was requested more than three months before the then scheduled trial date.

Dated: July 19, 2023

Respectfully submitted,

/s/ Christina Davidson Trimmer
Jennifer Seraphine (*pro hac vice admitted*)
Turner Boyd LLP
155 Bovet Road, Suite 750
San Mateo, California 94402
Tel: (650) 521-5930
Fax: (650) 521-5931
Email: seraphine@turnerboyd.com

Christina Davidson Trimmer
NC Bar No. 44857
SHUMAKER, LOOP & KENDRICK, LLP
101 South Stryon Street, Suite 2200
Charlotte, North Carolina 28280
Tel: (704) 375-0057
Fax: (704) 332-1197
Email: ctrimmer@shumaker.com

Michelle C. Dunn
Platinum Intellectual Property
3031 Tisch Way, Suite 110 PW
San Jose, CA 95128
Tel: 404-800-5884
Fax: 877-463-0654
Email: michelle.dunn@platinum-ip.com

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on July 19, 2023, the foregoing document was served on all counsel of record using the Court's CM/ECF system, which will send notification of such filing to any CM/ECF participants.

Respectfully submitted,

/s/ Christina Davidson Trimmer

Christina Davidson Trimmer
SHUMAKER, LOOP & KENDRICK, LLP
101 South Stryon Street, Suite 2200
Charlotte, North Carolina 28280
Tel: (704) 375-0057
Fax: (704) 332-1197
Email: ctrimmer@shumaker.com